

11/29/05

Control No: TEGE-25-1105-01

MEMORANDUM FOR INDIAN TRIBAL GOVERNMENTS EMPLOYEES

FROM: Christie Jacobs, Director, Indian Tribal Governments
/s/ Michelle Marx

SUBJECT: Interim Guidance on Fraud Procedures

The purpose of this memo is to issue interim guidance required for Indian Tribal Government Specialists. Please ensure that this information is distributed to all affected employees within our organization.

1. **Source(s) of Authority:** The Internal Revenue Code Section 6663 (a) Imposition of Penalty states that if any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud. Internal Revenue Code Section 6663 (b) Determination of Portion Attributable to Fraud states that if the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.
2. **Effect on Other Documents:** This guidance will be incorporated into IRM 25.1.9, Fraud Handbook, TEGE. This interim guidance will be in effect until August 16, 2006.
3. **Contact:** The Fraud Coordinator in Group 7289 (ADAPT) to facilitate the development of cases, and assist with communications between operating divisions.
4. **Expiration Date:** August 16, 2006.

Attachment: Interim Guidance on Fraud Procedures

cc: IMD Coordinator
Office of Servicewide Policy, Directives, & Electronic Research
www.irs.gov

Attachment: Interim Guidance on Fraud Procedures

In order to ensure the proper detection and prevention of fraud in Indian tribal government entities, and to ensure consistency within the Service, ITG will coordinate resources with the National Fraud Program located within SB/SE. In addition, ITG will designate a Fraud Coordinator to facilitate the development of cases, and assist with communications between operating divisions. I have designated a Fraud Coordinator from Group 7289 (ADAPT) for that responsibility.

The ITG Fraud Coordinator (FC), in conjunction with Fraud Technical Advisors (FTA) from SBSE, will provide guidance to ITG Managers and Specialists on the development of fraud cases. The following procedures will apply:

Fraud Development

- A. As soon as an ITG Specialist discovers indicators of fraud, he/she should discuss the issue with their Group Manager.
- B. If the Group Manager concurs that indicators of fraud are present, the ITG Specialist will contact the ITG FC to discuss the indications of fraud. The FC and ADAPT Manager will determine if the case should be referred to ADAPT or continue to be worked by the ITG Specialist.
- C. The ITG FC will contact the SBSE FTA in the appropriate location. If the SBSE FTA agrees, the ITG FC will set up a conference call or meeting with the ITG Specialist, ITG Group Manager and SBSE FTA to discuss the case. If all parties agree that the case should be developed for fraud, the ITG Specialist will complete Form 11661 (Fraud Development Status) and forward it the ITG FC for signature.
- D. The ITG FC will forward the Form 11661 to the SBSE FTA for their signature. The ITG FC and the SBSE FTA will prepare a plan of action and forward to the ITG Specialist. Under no circumstances should the ITG Specialist or ITG Group Manager contact CI at this stage.
- E. Upon receipt of a signed Form 11661, the ITG Specialist will update the case to Status 17 (fraud development) on AIMS (note: EOIC will not accept this designation), and proceed with the plan of action. (Development check sheet Form 11660)

- F. During the fraud development phase of the examination, one of the following will occur:
- The case will be returned to status 12 on AIMS and worked as a normal case.
 - The case will be developed for civil fraud.
 - The case will be referred to CI for criminal investigation.

Civil Fraud

Once it is determined that criminal fraud is not an issue, and/or all criminal proceedings have been completed, civil fraud may be considered. The ITG Specialist will complete the development of the case, including the recommendation regarding the assertion of the civil fraud penalty. The ITG FC and/or the SBSE FTA will assist with the write-up if the need arises. The case will remain in status 17 on AIMS during this process.

Criminal Fraud

Once affirmative acts (actions taken by the taxpayer that establish criminal intent) have been established, the ITG Specialist will suspend all examination activity and refer the case to the Criminal Investigation (CI). The referral will be made via Form 2797 (Referral Report of Potential Criminal Fraud Cases). The ITG FC and/or SBSE FTA will assist in the preparation where necessary.

The completed Form 2797 will be routed through the ITG Group Manager and ITG FC for concurrence. The ITG FC will route the Form 2797 to the SBSE FTA, who will forward the approved Form 2797 to the appropriate CI field office for consideration.

The Special Agent assigned to evaluate the criminal fraud referral will arrange an initial meeting to discuss the merits of the case. The ITG Specialist, ITG Group Manager, the ITG FC, SBSE FTA, and the Supervisory Special Agent will be invited to attend.

CI will conduct a disposition conference within 30 days of receipt of the criminal fraud referral to discuss acceptance or denial of the referral. If the criminal fraud referral is accepted, CI may make a request for a cooperating agent. The request is made on Form 2797, and must be made through the ITG Director. The ADAPT Group Manager will serve as an alternate.

A copy of Form 11661 and Form 2797, which are completed in the process and returned to the examiner, should remain in the case file. In addition, forms submitted on all fraud cases to the ITG FC will be maintained as documented involvement.